CFE Cities for Financial Empowerment

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New York City

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Chicago

Los Angeles

Miami

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San Antonio

Savannah

Seattle

March 30, 2009

Jennifer J. Johnson
Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, N.W.
Washington, DC 20551

Re: Docket No. R-1343, Regulation E

Dear Secretary Johnson:

The Cities for Financial Empowerment (CFE) is a coalition of nine diverse city governments working at the cutting-edge to expand the role that municipal governments play in improving the financial health and security of residents with low and moderate incomes. Founded and co-chaired by the Cities of New York and San Francisco, the CFE Coalition brings together pioneering administrations from across the country that use their positions within municipal government to advance innovative financial empowerment initiatives. Member cities, including Chicago, Los Angeles, Miami, Providence, San Antonio, Savannah, and Seattle, dedicate high-level city officials and resources for the purpose of developing municipal programs and initiatives that promote financial literacy and asset building among residents with low incomes.

CFE commends the Board's commitment to improving financial industry practices with regard to courtesy overdraft programs and appreciates this opportunity to comment on the proposed changes to Regulation E to strengthen consumer protections regarding these programs in regulated financial institutions. Of the two possible approaches outlined by the Board, CFE strongly supports requiring new accountholders to affirmatively consent, or "opt in," to fee-based overdraft protection plans. In addition, existing accountholders should be given a choice about whether to participate in "courtesy" overdraft programs.

Courtesy overdraft is extremely expensive, with financial institutions generating $17.5 billion in fee income in return for extending only $15.8 billion through fee-based overdraft coverage in 2006.[1] The estimated typical effective APR on fees resulting from ATM and point-of-sale (POS) debit transactions is between 1,173% and 3,540%.[2] The burden of these exorbitant fees is concentrated on the least financially stable, with 16% of overdraft loan users paying 71% of fee-based overdraft loan fees and with repeat users more often low-income, single, non-white renters.[3]

CFE cities are designing and implementing innovative policy solutions to help people who are disenfranchised from the mainstream banking system gain access to affordable financial services through "Bank On" campaigns and specialized pilot programs. By focusing on connecting low- and moderate-income families to banking, opportunities for asset building and financial education, as well as maximizing consumer protections, these municipal efforts are reaching millions. However, high-

[1] Halperin, Eric and Peter Smith, "Out of Balance: Consumers pay $17.5 billion per year in fees for abusive overdraft loans," Center for Responsible Lending, July 11, 2007.
[2] FDIC, "Study of Bank Overdraft Programs," November 2008.
[3] Halperin, Eric, "Overdraft Loans Trap Borrowers in Debt," Center for Responsible Lending, March 18, 2008.

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cost overdraft programs undermine consumer confidence in financial institutions and hinder CFE cities' efforts to connect those with low to moderate incomes with mainstream financial institutions.

Requiring affirmative consent (opt in) for fee-based overdraft protection plans for ATM and POS debit transactions offers considerably stronger protection than placing the burden on consumers to opt out. This requirement would restore the core component of a fair consumer transaction – meaningful choice – to this critical aspect of basic banking and begin to restore confidence and trust in mainstream financial institutions. Considerable research and experience underscore that an 'opt out' model is simply insufficient to ensure that consumers will make decisions in their own best interest. The behavioral economics field has discovered countless examples demonstrating that consumers are unlikely to deviate from the default status.[4] Consumer choice is a foundation of a fair marketplace; in the vast majority of transactions, consumers are not compelled to decline a service, but rather, must affirmatively select it. This same standard of consumer choice should be applied to fee-based overdraft programs.

As those with low incomes and banks alike are facing increasing economic instability, the Board can have a significant impact on the recovery and the future strength of the financial system by enacting regulations that increase fairness and transparency in the marketplace. Such regulations would support innovative efforts to create real pathways to improve the financial health of low- and moderate-income families.

Respectfully submitted,

Jonathan Mintz	José Cisneros
Commissioner	Treasurer
NYC Department of Consumer Affairs	City and County of San Francisco
Co-Chair, CFE Coalition	Co-Chair, CFE Coalition

[4] For example, see Sovern, Jeff. "Opting In, Opting Out, or No Options at All: The Fight for Control of Personal Information," Washington Law Review, October 1999. The study found that although many consumers find it objectionable for companies to buy and sell their personal information, relatively few actually opted out when given the option.